

REMARKS

Applicant has thoroughly considered the non-final Office action dated December 21, 2006 and has amended the application to more clearly set forth the invention. Claims 1, 13, 21, and 32 have been amended by this Amendment A. Thus, claims 1-41 are presented in the application for further examination. Reconsideration of the application as amended and in view of the following remarks is respectfully requested.

Claim Rejections 35 U.S.C. 112

Claims 8, 9, 10, 27, 28, 29, 37, 38 and 39 stand rejected under 35 U.S.C. § 112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Office rejected claim 8 because it recites, “a conditional remainder purchaser does not guarantee a loan,” and claim 3, from which claim 8 depends, recites “a conditional remainder purchaser does guarantee a loan.” It appears the Examiner has determined that claim 8 contradicts claim 3 and, therefore, has rejected claim 8. Claims 27 and 37 were rejected for similar language based on their dependency from claims 23 and 34, respectively.

In response, the Applicant has amended claim 8 to depend from claim 1, amended claim 27 to depend from 21, and amended claim 37 to depend from claim 32. Thus, applicant submits that claims 8, 27, and 37 are now in compliance with 35 U.S.C. § 112 second paragraph definiteness requirement, and respectfully requests that the rejection of these claims under 35 U.S.C. § 112 second paragraph be withdrawn. In addition, claims 9 and 10 depend from claim 8, claims 28 and 29 depend from claim 27, and claims 38 and 39 depend from claim 37. As such, these claims are believed to satisfy the requirements of § 112 second paragraph for the same reasons as the respective claims from which these claims depend.

Response to Rejection under 35 U.S.C. §103

Claims 1-4, and 7 stand rejected under 35 U.S.C § 103 as being unpatentable over an article by Elizabeth Razzi entitled “Buying a home in a buyer’s market,”

published in April 1996 in Kiplinger's Personal Finance Magazine ("Razzi") in view of an article by Lawrence Waggoner entitled "Reformulating the Structure of Estates: A proposal for legislative action", Harvard Law Review, February 1972, Vol. 85, Issue 4 ("Waggoner"), an article by Murray Seasongood entitled "Drastic Pledge Agreements", Harvard Law Review, January 1916, Vol. 29, No. 3, pages 278-279 ("Seasongood"), an article by Leslie Goffe entitled "US Islamic Finance Initiatives Take Off", Middle East Magazine, October 2001, Issue 316 ("Goffe") and official notice. For the reasons discussed in detail below, applicant submits that the cited references, alone or in combination, fail to teach or suggest all the features of applicant's claimed invention.

**Waggoner Fails to Teach or Suggest
a Conditional Fee Purchaser or a Conditional Remainder Purchaser**

The Examiner acknowledges that Razzi does not teach every element of claim 1 (See Office action at page 3), but asserts that the deficiencies of Razzi are remedied by the teachings of remaining cited references. For example, the Examiner states "that Razzi does not provide any definition that would suggest a conditional fee purchaser and [a] conditional remainder purchaser," but asserts that Waggoner "suggests a conditional fee purchaser and [a] conditional remainder purchaser."

As an initial matter, the Applicant wishes to respectfully point out that the Examiner did not identify the particular drawing(s) and/or page(s) or paragraph(s) of the reference(s) that suggest the particular claim limitations of a conditional fee purchaser and a conditional remainder purchaser being asserted by the Examiner. Accordingly, the Applicant contends the Examiner did not comply with MPEP 707 and 37 CFR 1.104(c)(2), since the Applicant has not been accorded a fair opportunity to respond to the present Office Action. Applicant therefore respectfully requests that the Examiner issue the next Office Action in compliance with MPEP 707 and 37 CFR 1.104(c)(2) as a non-final action.

After reviewing the cited prior art, the Applicant submits that the Examiner will be unable to identify such applicable drawing(s) and/or page(s) or paragraph(s) of the reference(s) that apply, because Waggoner fails to teach or suggest a conditional fee purchaser and a conditional remainder purchaser as claimed and described in the

specification of the present application. As defined in the specification, a conditional remainder purchaser is defined as an entity (person or business) ***purchasing an estate limited to take effect and be enjoyed dependent upon, or subject to, an event or condition.*** (See application, paragraph 0031). A conditional fee purchaser is defined as an entity (person or business) ***purchasing a qualified fee, that is, one which is to be determined or be defeated by the happening of some contingent event or condition.*** (See application, paragraph 0032). As described, the conditional remainder purchaser provides the down payment and usually the closing costs for the purchase of the real property. The conditional fee purchaser provides the seller with the balance of the costs of the house, either in a lump sum cash payment, as shown in FIG. 1, or by financing a loan for the remaining balance owed on the real property, and the closing costs, if not already paid by the conditional remainder purchaser. In other words, the conditional fee purchaser and the conditional remainder purchaser are engaged in a contract with a seller for the purpose of purchasing real property from a seller, in which the conditional fee purchaser receives a defeatable ownership interest, and the conditional remainder purchaser receives a potential future interest.

To this end claim 1 recites, in part:

“ . . . [a] method for financing a real estate transaction between a conditional fee purchaser and a conditional remainder purchaser, said method comprising: (a) executing a conditional fee agreement with regards to purchasing real property between said conditional fee purchaser and said conditional remainder purchaser, said conditional fee agreement having a determination date; (b) executing a real estate sales contract between said conditional fee purchaser, said conditional remainder purchaser, and a seller of a piece of real property; (c) payment by said conditional fee purchaser to the seller of the amount owed by said conditional fee purchaser under the real estate sales contract; (d) payment by said conditional remainder purchaser of closing costs and down payment for the purchase of said real property as required under the real estate sales contract..., **wherein the conditional remainder purchaser receives an ownership interest in the real property only upon receipt of the fee simple interest on said determination date.**”

Although Waggoner discusses a conditional limitation with respect to a future interest in an estate, the reference fails to teach or suggest a conditional fee ***purchaser*** or a

conditional remainder **purchaser** as defined in the specification and as claimed in claim 1. As such, the applicant respectfully requests that the Examiner withdraw the rejection of claim 1 as being unpatentable over Waggoner.

Goffe Teaches Away From the Claimed Invention

The Examiner further acknowledges that Razzi does not disclose signing of an agreement between the conditional fee purchaser, the conditional remainder purchaser, and the seller, but asserts that Goffe suggests a real estate contract will be executed by a conditional fee purchaser, conditional remainder purchaser and a seller. In particular, the Examiner states that Islamic financed mortgages, in existence since 1997, creates co-ownership of the property between two different parties that suggests a conditional fee purchaser and conditional remainder purchaser. (See Office Action at page 4). A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983). Applicant submits that Goffe teaches away from the claimed invention, and, thus, fails to teach or suggest the claim limitation of a conditional fee purchaser and conditional remainder purchaser as described in the specification.

The present application discloses that the conditional fee purchaser and conditional remainder purchaser are not co-owners as taught by Goffe. As disclosed in the present application, “advantages of this system include allowing a conditional fee purchaser to own an interest in real property that may become a fee simple interest on the determination date” and “allowing the conditional fee purchaser to have all the benefits of home ownership, at costs typically associated with a leasehold interest, and without having to provide a large sum of money for a down payment and closing costs.” (See application, paragraph 0016). However, “**the conditional remainder purchaser has no present interest** in the property, **aside from a potential future ownership** role that is entirely contingent upon facts outside the conditional remainder purchaser's control.” (See application, paragraph 0018). As noted above, newly amended independent claim 1 recites, in part, **wherein the conditional remainder purchaser receives an ownership interest in the real property only**

upon receipt of the fee simple interest on said determination date. In other words, there is never co-ownership of the real property between the conditional fee purchaser and the conditional remainder purchaser. In contrast, as acknowledged by the Examiner, Goffe discloses that the Islamic financed mortgages, in existence since 1997, creates co-ownership of the property between two different parties. As such, the cited reference teaches away from the limitations of independent claim 1, and, thus fails to teach or suggest each and every element of the claim 1.

The Examiner also acknowledges that Razzi does not discuss the use of third party funds for closing costs and a down payment. However, the Examiner states that official notice is given that one of ordinary skill in the art would be aware that a conditional remainder purchaser can make a payment towards closing costs and the down payment. (See Office Action at page 4). The Examiner further asserts that “[a]ccording to the definition provided in the specification, the conditional remainder purchaser can be a business or a person, and further asserts that a many financial institutions help pay for closing costs.”

However, the mere fact that a conditional remainder purchaser can be a financial institution does not necessarily mean that a financial institution that pays closing costs is a conditional remainder purchaser as claimed and described in the specification of the present application. Again, as defined in the specification a conditional remainder purchaser is an entity (person or business) ***purchasing an estate limited to take effect and be enjoyed dependent upon, or subject to, an event or condition.*** Just because a financial institution pays closing costs does not mean that the financial institution is purchasing an estate limited to take effect and be enjoyed dependent upon, or subject to, an event or condition. Applicant further points out that a lien interest is not the same as a future estate interest. As the Examiner is relying official notice to support the finding, Applicant respectfully requests the Examiner provide an affidavit or declaration setting forth specific factual statements and an explanation to support the finding in accordance with MPEP 2144.03(C).

Moreover, Applicant submits that the Examiner has erroneously equated a mortgagee with the conditional remainder purchaser. (See Office Action at page 5). As known to those skilled in the art, in exchange for lending money to a buyer toward the

purchase of property, the mortgagee receives a security interest in the property such that upon default of the mortgagor (buyer), the mortgagee has the option to foreclose the mortgage, sell the mortgaged premises, and use the proceeds to pay the debts secured by the mortgage. The Examiner states that Seasongood “discusses the use of a pledge to **take an interest in a security** without going through foreclosure.” (See Id.). Even with the drastic pledge agreement described in Seasongood, mortgages can effectively be foreclosed with little to no protection for the borrower. The borrower could see their equity wiped out instantly by a relatively minor breach. According to the present invention, the termination date is a planned feature of the agreement. The term owner fully accepts and plans on losing the property – much like a renter at the termination of a leasehold, unless the term owner buys out the conditional interest. The benefit to the term owner is 1) a lower monthly payment, and 2) a shifting of risk to the investor (i.e. if property value stay stagnant or goes down, the investor eats it). In other words, in contrast to the mortgagee, the conditional remainder purchaser has a future estate interest in the purchased property and not a lien interest.

Thus, whether considered alone or in combination none of the references cited above teach or suggest each and every element of independent claim 1, and therefore, claim 1 is believed to be allowable over the cited references, and applicant respectfully request the Examiner to remove the rejection of claim 1 based on the cited references.

For substantially the same reasons the combination of Razzi, Waggoner, Seasongood, and Goffe fail to teach or suggest each and every element of independent claim 1. The combination of these references also fails to teach each and every element of claims 13, 21 and 32. More specifically, the combination of references fail to teach or suggest each of the following claimed aspects of the invention:

negotiating and executing a conditional fee agreement with regards to purchasing real property between said conditional fee purchaser and said conditional remainder purchaser, said conditional fee agreement having a determination date;

executing a real estate sales contract between the conditional fee purchaser, the conditional remainder purchaser, and a seller of a piece of real property;

the conditional remainder purchaser paying closing costs and down payment for the purchase of said real property as required under the real estate sales contract;

the conditional remainder purchaser on said determination date of either a fee simple interest in said real property, or a payment for said conditional remainder purchaser's share of said fee simple interest by said conditional fee purchaser, wherein the conditional remainder purchaser receives an ownership interest in the real property only upon receipt of the fee simple interest on said determination date.

Claims 13-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Razzi's in view of Waggoner, Seasongood, Official notice, and in further view U.S. Patent No. 6,236,977 to Verba et al. (Verba). Claims 21-23, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Razzi in view of Waggoner, Seasongood, Goffe, official notice, and in further view of an article by Michael D. Larson entitled "Hard Money Lenders: The source for last resort loans, published on April 27, 2001 ("Larson"). In addition, with respect to claim 21, the Office states that it would be obvious to one of ordinary skill in the art at the time of applicant's invention to combine the structure provided in Razzi with an article by Ahli Bank entitled "Manzil Home Purchase Plans" 1997, www.iibu.com/buy_home/murabahow.html ("Bank"), Waggoner, Seasongood, Larson and with official notice that exists in real estate law and business methods used in the art. Claims 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Razzi in view of Waggoner, Seasongood, Bank, official notice, and Larson.

With respect to claim 13, the Examiner cites Verba as teaching the use of storing information regarding real estate transactions. (See Office Action at page 10). With respect to claims 21 and 32, the Examiner further relies Larson on for suggesting how a private investor may seek a home purchaser –conditional fee purchaser to provide unconventional loans to help a home purchaser. Moreover, with respect to claim 21, the Examiner did not identify the particular drawing(s) and/or page(s) or paragraph(s) of Bank that apply to a particular claim limitation, and, it is not clear to the Applicant exactly which claimed limitation the Examiner is asserting is taught by Bank. Thus, the Examiner did not comply with MPEP 707 and 37 CFR 1.104(c)(2), and the Applicant

has not been accorded a fair opportunity to respond to the present action. Applicant therefore respectfully requests that any future action be issued in compliance with MPEP 707 and 37 CFR 1.104(c)(2) as a non-final action in order to provide the Applicant a fair opportunity to respond to the Examiner's rejection of the claims. Nevertheless, even when combined as suggested by the Examiner, neither Verba, Larson, nor Bank fail to remedy the deficiencies of Razzi, Waggoner, Seasongood, and Goffe in that they each fail to teach or suggest the above identified claimed aspects of the invention.

Furthermore, with respect to claim 32, the Examiner asserts that it would be obvious to one of ordinary skill in the art at the time of applicant's invention to combine the structure provided in Razzi with Goffe, Waggoner, Seasongood, Larson and with official notice that exist in real estate law and business methods used in the art to attempt to provide a party a bypass to a property owner's right to the equity of redemption. Applicant does not understand the Examiner basis for making this particular assertion, because the application does not claim or describe bypassing a property owner's right to the equity of redemption.

In view of the foregoing, the Applicant submits that independent claims 1, 13, 21, and 32 are allowable over the cited prior art. In addition, claims 2-12, 14-20, 33-41 depend from these claims and are believed to be allowable for at least the same reasons as the independent claims from which they depend.

It is felt that a full and complete response has been made to the Office action and, as such, places the application in condition for allowance. Such allowance is hereby respectfully requested. Although the prior art made of record and not relied upon may be considered pertinent to the disclosure, none of these references anticipates or makes obvious the recited invention. The fact that Applicant may not have specifically traversed any particular assertion by the Office should not be construed as indicating Applicant's agreement therewith.

The Applicant wishes to expedite prosecution of this application. If the Examiner deems the claims as amended to not be in condition for allowance, the Examiner is invited and encouraged to telephone the undersigned to discuss making an Examiner's amendment to place the claims in condition for allowance.

The Commissioner is hereby authorized to charge \$60.00 for a one (1) month extension of time up to April 21, 2007 to the Deposit Account No. 50-1662

Respectfully submitted,

POLSINELLI SHALTON FLANIGAN
SUELTHAUS PC



Date: April 18, 2007

Robert O. Enyard, Jr., Reg. No. 57,780
100 South Fourth Street, Suite 1100
St. Louis, Missouri 63102
Tel: (314) 889-8000
Fax: (314) 231-1776
Attorney for Applicant